Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

AIDA L. ZIADEH
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For Writ Of Certiorari To The Fourth Circuit Court Of Appeals

Petition For Writ Of Certiorari

Aida L. Ziadeh, pro se
2501 Corner Rock Rd.
Midlothian, VA 23113-2204

(804)794-7722

QUESTIONS PRESENTED

The Petition involves a Consent Order to pay Restitution imposed on the Petitioner in a criminal case in which she was not a defendant convicted of a crime nor entered into a plea agreement.

The questions presented in this petition accordingly;

1. Does the District Court judge has the authority to impose restitution on a "non-defendant" in a criminal case pursuant to 18 U.S.C §3663A(a)(1)?

2. Does the Court judge has the duty to recognize a void judgment when it comes before him, and dismiss it as such?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page, and a copy of this petition has been served on all parties or their Attorney (s).

TABLE OF CONTENTS

QUESTIONS PRESENTED i
LIST OF PARTIES ii
TABLE OF CONTENT..... iii
APPENDIX iv
TABLE OF AUTHORITIES v
PETITION FOR A WRIT OF CERTIORARI.....1
OPINION BELOW..... .. 1
JURISDICTION 2
CONSTITUTIONAL And
STATUTORY PROVISIONS INVOLVED..... 2
STATEMENT OF THE CASE 3
REASONS FOR GRANTING THE WRIT 8
1. The Fifth Amendment bars the Court from imposing Restitution without due process. 12
2. The Court lacked statuary authority to impose restitution 13
3. The Fourth Circuit erred by affirming Court orders without review of the entire record. 14
4. The Court erred affirming the Consent Order that was based on void judgment..... 14
CONCLUSION 16

APPENDIX

A. *Aida L. Ziadeh v. US* No. 3:06cv386
Order: U.S. District January 17, 2008 .....A-1

B. *Aida L. Ziadeh v. US* No. 3:06cv386
Memorandum Opinion U.S. District
January 17, 2008..... A-2

C. *Aida L. Ziadeh v. United States*, No 08-1154
Order U.S 4th Circuit Court of
Appeal June 23, 2008 .....A-7

D. *Aida L Ziadeh v. United States*, No 08-1154
Order U.S 4th Circuit Court of Appeal
September 29,2008 .....A-9

E. *Aida L Ziadeh v. United States*, No 08-1154
Mandate U.S 4th Circuit Court of Appeal
October 7, 2008.....A-10

F. *U.S. v. Aida L Ziadeh* No 3:02CR273
Order U.S District Court
February 10, 2003.....A-11

G. *U.S v. Joseph Ziadeh*, No 3:02CR273
Order: U.S. District June 23, 2003 .....A-13

H. *Aida L. Ziadeh v. US* No. 3:06cv386
Order: U.S. District January 23, 2007 .....A-16

I. *Aida L. Ziadeh v. US* No.
Motion for summary Judgment
March 12, 2007 .....A-24

J. *U.S. v. Joseph Ziadeh* No 3:02CR273
Order U.S. District Court March 31, 2006 .....A-28

K. *U.S. v. Joseph Ziadeh* No 3:02CR273
Plea Agreement U.S District Court
December 22, 2002 .....A-30

L. *U.S. v. Joseph Ziadeh* No 03-4520
Order U.S 4th Circuit Court of Appeal
July 19, 2004 .....A-41

TABLE OF AUTHORITIES

cases

U.S v. Joseph Ziadeh,
03-4520, CR-02-273, ...5,11,14
US. V. Paul J. Leahy
438 f.3d 328 (2005) 9
United States v. *Syme,*
276 F.3d 131, 159 (3d Cir 2002) 9
United States v. Sleight,
808 F.2d 1012 (3d Cir. 1987) 9
United States v. Palma,
760 F.2d 475, 479 (3d Cir. 1985) 9
Pasquantino v. United States
544 U.S. 349 (2005) 9
Kelly V. Robinson,
479 U.S. 36 (1986) 10
US V. Roper
No. 05-4236 (2006) 10, 11
UK Ministry of Def v.Trimble Navgation Ltd.,
422 F.3d 165, 171 (4th Cir. 2005) 10
salmon forex, Inc. v. Tauber,
8 F.3d 966, 975 (4th Cir. 1993). 11
United States v. Buchey,
810 F.2d 456, 461 (4th Cir. 1987) 13
United States v. Snider,
957 F. 2d 703, 706-07 (9th Cir. 1992) 13
United States v. Satterfield,
743 F.2d 827, 837 (11th Cir. 1984) 13
Anders v. California (67)
386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493..... .14
People v. Wende (1979)
25 Cal.3d 436, 158 Cal.Rptr. 839 15
Long v. Shorebank Devel. Corp,
182 F 3d 548 (C.A. 7 III 99).....12

Statutes

18 U.S.C §3663A(a)(1).....2, 10
28 U.S.C § 1254(1) 2

Other Authorities

Fifth Amendment 12
Representative Bingham, *Globe App 81* 12
James Madison, 1 Annals of Cong. 439 (1789) 13

PETITION FOR A WRIT OF CERTIORARI

The Petitioner Aida L. Ziadeh, PRO SE respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit of Virginia, and the improper Final Restitution Order entered June 10, 2003 in the criminal case No 3:02CR273 that the petitioner argued but was not addressed in the Opinion of the United States Court of Appeals denying Motion to Compel compliance with The Consent Order and denying her Motion For Partial Stay of Consent Order.

OPINIONS BELOW

The Order of the U. S. District Court entered on January 17, 2008, appears at Appendix A (pg. A-1). The Memorandum Opinion of the U. S. District Court entered on January 17, 2008, appears at Appendix B (pg. A-2). The Opinion of the U.S. Court of Appeals, appears at Appendix C (pg. A-7). The Order of the U. S. Court of Appeals denying rehearing en banc, appears at Appendix D (pg. A-9). The Mandate of the U.S. Court of Appeals appears at, Appendix E (pg. A-10). The Order of the U.S. District Court entered on February 10, 2003 dismissing the indictment appears at Appendix F (pg. A-11). The U. S. District Court Final Restitution Order entered on June 10, 2003 appears at Appendix G (pg. A-13). The U.S. District Court Consent Order entered on January 23, 2007, and appears at Appendix H (pg. A-16).

JURISDICTION

The order of the U.S District Court entered on January 17, 2007 denying the motion to compel compliance with the consent order and the motion for a partial stay of consent order pending resolution of the motion to compel was affirmed by the U. S. Court of Appeals on June 23, 2008. The petition for rehearing en banc was denied on September 29, 2008 and the mandate was entered and affirmed on October 7, 2008. This Court has Jurisdiction over this petition under 28 U.S.C § 1254(1).

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides, in pertinent part, that; "No person shall be held for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury .... "

Congress intended to treat restitution as one of the options available to the district court in imposing an appropriate sentence on defendants.

The title 18 U.S.C §3663A(a)(1) provides, in pertinent part, that

a. (a)(1)(A) The Court, when sentencing a Defendant convicted of an offense under this title, ... that the Defendant make restitution to any victim of such offense. The Court may Order, if agreed to by the parties in a Plea

Agreement, restitution to persons other than the victims of the offence.

b. (a)(1) Notwithstanding any other provision of law, when sentencing a Defendant convicted of an offense described in section (c),. The Court shall order ... that the Defendant make restitution ...

18 U.S.C §3663A(a)(1)

STATEMENT OF THE CASE

Aida L. Ziadeh (hereinafter the "Petitioner") was the co-owner of Bell Construction Company, Inc., (hereinafter the "Bell"). In 1996 Bell entered into the Sunny Point project, a six millions construction contract with the U.S. Army Corps of Engineers (hereinafter the "Corps"). By January 16, 1998 Bell had completed 78% of the project when the Corps terminated the contract for default. Bell filed a Request for Equitable Adjustment (REA) for wrongful termination.

On June 22, 1998, Bell erroneously received a $145,720.00 check that was issued to Bell's Sunny Point project surety (United Pacific). Bell assuming the check was payment from the unpaid earning and deposited it into Bell's business account at First Union Bank (hereinafter the "Bank"). The Bank did not realize the improper endorsement, and credited the sum to Bell's account. When the error was discovered Bell offered the Surety full refund from Bell's unpaid earning, no response was received.

On August 21, 2002 a grand jury in the United States District Court for the Eastern District of Virginia (hereinafter the "Government") indicted the Petitioner and her husband Joseph Ziadeh on various counts including bank fraud in the criminal case No 3:02CR273. On October 22, 2002 the Government placed liens on all the Petitioner's properties.

On December 20, 2002, Joseph Ziadeh entered into a Plea Agreement with the Government, and it was approved by the United States District Court for the Eastern District of Virginia, whereby he pled guilty to bank fraud and conspiracy, as shown in Appendix K pg. A-30). As a result of Joseph Ziadeh Plea Agreement, the government agreed to dismiss the entire indictment against the Petitioner and the United States District Court for the Eastern District of Virginia entered the Order on February 10, 2003 dismissing the entire indictment as shown in Appendix F (pg. A-11).

The Petitioner was not a party to such Plea Agreement nor entered in any sort of negotiation verbally or in writing to dismiss the indictment against her. The Government's motion states in part;

> Comes Now the United States, by Counsel, and in compliance with its Plea Agreement with Defendant Joseph Ziadeh approved by the Court on December 20, 2002. Moves the Court to dismiss, without prejudice, the indictment in the case against Defendant Aida Ziadeh.
>
> Appendix F (Pg A-11)

On April 25, 2003 during sentencing the Government introduced names of subcontractors of the Sunny Point project, alleging that they were defrauded by Joseph Ziadeh, and the Court found it as relevant conduct and increased the restitution from $145,720.00 to $894,161.48.

On June 10, 2003 while the Petitioner was not a defendant convicted of any crime in the criminal case No 3:02CR273, the Court without jurisdiction or statuary authorization imposed a criminal sentence on her, and entered her name in the Final Restitution Order as shown in Appendix G (pg. A-13) of Joseph Ziadeh's criminal which states in part;

> 1. That within 30 days after entry of this Final Restitution Order, the defendant and the defendant's spouse, Aida L. Ziadeh, will make and deliver a note payable to the United States of America in the amount of $894,161.48...
>
> Appendix G (pg. A-13)

The Petitioner's husband appealed his Final Restitution Order, *US v. Joseph Ziadeh*, 03-4520, CR-02-273, Appendix L (pg.-53). However, the inclusion of the Petitioner's name in the Final Restitution Order was not raised during such appeal and the Order was affirmed on July 19, 2004. Due to ineffective assistance of counsel the Petitioner's husband filed several motions seeking relief from the

Restitution, arguing among other things the Ordering of the Petitioner to pay restitution which is in violation of the 5th condition of his Plea Agreement Appendix K (pg. A-30) which states in part;

> 5. The United States will not further criminally prosecute defendant, or the defendant's spouse, Aida L. Ziadeh, in the Eastern District of Virginia for the specific conduct described in the indictment, criminal information or statement of facts... The United States also agrees that upon the acceptance of the defendant's plea by the Court, the United States will seek to dismiss all the charges pending against the defendant's spouse, Aida L. Ziadeh, and will not further prosecute the defendant's spouse for anything set forth in the indictment, criminal information or statement of facts.
>
> Appendix K (pg. A-33)

Because the petitioner's husband was appealing the Final Restitution Order, and because there was no pending case against her, on March 24, 2006. she filed a motion for Summary Judgment Appendix I, (pg A-24) to remove the liens from her property arguing that the Final Restitution Order against her was unconstitutional and the Court lacked jurisdiction to enter such Order, stating in part;

> Once the government dismissed the indictment, and the Court accepted such dismissal, the Court then lost jurisdiction to take any action what so ever against the Petitioner.
>
> Appendix I, (pg A25).

However, The Court did not address the Petitioner's argument, nor her motion directly, instead, it entered an Order on March 31, 2006 against her husband Appendix J (pg A-28) ruling that the motion was improper for lack of a pending case on which the Court could enter a Summary Judgment.

The Petitioner filed a motion for reconsideration, in which she argued and submitted copy of her husband's Plea Agreement showing that she was not a party to such agreement, also, she provided copies of the February 10, 2003 Court Order dismissing the entire indictment against her, thus showing the Court's lack of Jurisdiction when ordered her to pay restitution on June 10, 2003. However, the Court did not address the Petitioner's argument directly, instead, it entered an Order on April 21, 2006 denying the Motion for Reconsideration.

The petitioner filed the Civil Action No. 3:06cv386 seeking to quiet claim. Argued that the liens were improperly placed based on a void and improper Final Restitution Order, and stated in part;

> The Plaintiff has not borrowed money which must be paid, defaulted on any loan, defaulted on any mortgage, or been properly Ordered by any Court to pay a fine or restitution for which the properties could be lawfully be security.

The Government objected and alleged that the Petitioner was responsible for the restitution based on a verbal agreement with her deceased attorney.

On January 24, 2007, without help from the court and of fear for her liberty as she was threatened with contempt of court, the Petitioner entered into a Consent Order, Appendix H (A-16) which converted the Final Restitution Order in the Criminal case 3:02CR273 into a judgment in the Civil Case.

REASON FOR GRANTING THE WRIT

Property ownership is a fundamental right afforded to the people in the U.S. Constitution. The Petitioner's constitutional right is being violated by the Court when it imposed upon the Petitioner a restitution order which is a **criminal penalty** when she was neither a defendant nor convicted of any crime only to justify the illegal take over of my property.

Six years to the date, on February 10, 2003 the U.S. District Court for the Eastern District of Virginia entered an Order dismissing the entire indictment in the criminal case No 3:02CR273. With the dismissal of the indictment, the Petitioner seized to be a defendant in such case after February 10, 2003. With such dismissal the Court divested its Jurisdiction, and could not enter an Order or impose a sentence on the Petitioner. However, four months later, on June 10, 2003, when the petitioner was not a defendant in any case, and while the court lacked jurisdiction and statutory authorization, it imposed on the Petitioner a criminal sentence in the form of restitution, not to mete out appropriate criminal punishment for any conduct - because there was none as she was not a defendant in the case- but to collect money for the benefit of the alleged fraud victims in the criminal case in which she was

exonerated of any wrong doing when the entire indictment against her was dismissed.

For the last six years the Petitioner has been seeking justice and relief from the unjust criminal penalty imposed upon her. This Court and other court have ruled that the restitution is a criminal penalty. In *US. V. Paul J. Leahy* The Court argued in part;

> This is not the first time the we have addressed this issue. In United States v. *Syme*, after reviewing several of our earlier cases, we stated that "[w]e consider restitution orders made pursuant to criminal convictions to be criminal penalties'. " 276 F.3d 131, 159 (3d Cir 2002). *Syme* accordingly held that "restitution ordered under 18 U.S.C §3663 [the VWPA] constitutes punishment for purpose of Ex Post Facto Clause analysis); *United States v. Sleight*, 808 F.2d 1012 (3d Cir. 1987) (finding that under Federal Probation Act, restitution "remains inherently a criminal penalty"); *United States v. Palma*, 760 F.2d 475, 479 (3d Cir. 1985) (holding that restitution Order under VWPA is criminal penalty).

The *Leahy* Court went on saying that the Supreme Court has touched on this issue as well. In *Pasquantino v. United States*, 544 U.S. 349 (2005). A wire fraud case in which the MRVA applied, the Court noted;

> The purpose of awarding restitution in this action is not to collect a foreign tax,

> but to mete out appropriate criminal punishment for that conduct.

The *Leahy* Court further argued that restitution was a criminal penalty, and is consistent with earlier Supreme Court precedent, citing *Kelly V. Robinson*, 479 U.S. 36 (1986) a bankruptcy case in which the Court initially observed that "[t]he criminal justice system is not operated primarily for the benefit of victims." Id. At 52. The Court went on to state that "[a]lthough restitution does resemble a judgment 'for the benefit of' the victim," it is imposed in the context of a criminal sentence and "[t]he victim has no control over the amount... or the decision to award" restitution.

Although the Petitioner was not a defendant in the criminal case No 3:02CR2; However, at sentencing the district court improperly followed the dictates of the MVRA when entered a final restitution order against her pursuant to 18 U.S.C §3663A(a)(1), which Congress fashioned to impose restitution on **defendant** as part of their sentence. In the *US V. Roper* No. 05-4236 (2006) the Court argued in part;

> When called to interpret federal statutes, "c[ourts indulge a strong presumption that congress expresses its intent through the language it chooses. Therefore, when the terms of a statute are clear and unambiguous our inquiry ends and we should stick to our duty to enforcing the terms of the statute as congress has drafted it." *United Kingdom Ministry of Def. v. Trimble Navgation Ltd.*, 422 F.3d 165, 171 (4th Cir. 2005) (internal

quotation marks omitted). We assume that the legislature used words that meant what it intended; that all words had a purpose and were meant to be read consistently; ... and that a statute is not self-contradictory or otherwise irrational, " see *salmon forex, Inc. v. Tauber*, 8 F.3d 966, 975 (4th Cir. 1993).

US v. Roper No 05-4236

In many ways, cases like this sound like a tale from the dark ages when the local lord took your land and gave it to someone he believed to be more deserving. Citizens have fought for hundreds of years to gain and protect their right to property ownership.

Now, the laws that are supposed to protect this fundamental right are being turned on their head.

The Petitioner is asking the Supreme Court to put a stop to this abuse. This petition should be granted for reason stated and the following reasons;

First: To enable this Court to provide guidance on the true meaning of the Constitution and due process.

Second: To enable this Court to provide guidance on interpreting the statute and what constitute "defendant" when imposing a criminal penalty in the form or restitution.

Third: To enable this Court to provide guidance to review the entire record when affirming a restitution order.

1. The Fifth Amendment bars the Court from imposing Restitution without due process.

The District Court improperly ordered the Petitioner to pay the sum of $894,161.48 as restitution in the criminal case No. 03:02CR273, in which she was not a defendant, no convicted of any offense , nor she was under indictment . This is clear violation of her Due Process rights under the Fifth Amendment, which clearly states:

> No person shall be held for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury...
>
> Fifth Amendment

The Petitioner is asserting a most serious Constitutional claim. The purpose of the Courts is "the enforcement ... of the Constitution on behalf of every individual citizen of the Republic... to the extent of the right guaranteed her by the Constitution." Representative Bingham, *Globe App 81.* These rights must be enforced by the Courts, and it is these rights the Petitioner is seeking to have protected. Referring to the Bill of Right, James Madison said:

> If [these rights] are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative of Executive; they will be naturally led to resist every encroachment upon rights expressly

stipulated for in the Constitution by the declaration of rights."

1 Annals of Cong. 439 (1789).

2. The Court lacked statuary authority to impose restitution.

The Final Restitution Order entered on June 10, 2003 in the criminal case 3:02CR273 states in part;

> It appearing to the Court that the defendant has, in his plea agreement, consented to the entry of a restitution order for the full amount if the victims' losses as determined by the Court and to pay the full amount of the restitution is mandatory pursuant to 18 U.S.C §3663A(a)(1)...
>
> Appendix G (pg. A-13)

However, the Petitioner did not enter into any plea agreement, nor she was a defendant in the mentioned case when the Final Restitution was entered on June 10, 2003 as the entire indictment against her was dismissed four months earlier on February 10, 2003.

Also as a general matter, restitution is part of a criminal sentence. See *United States v. Buchey*, 810 F.2d 456, 461 (4th Cir. 1987) ("Criminal restitution... is part of the sentencing process [and thus] is fundamentally 'penal' in nature."); see also *United States v. Snider*, 957 F. 2d 703, 706-07 (9th Cir. 1992) ("Restitution imposed as a component of the defendant's sentence in a criminal penalty, not a civil remedy."); *United States v. Satterfield*, 743 F.2d 827,

837 (11th Cir. 1984)(noting that Congress intended "to treat restitution as one of the options available to the district court in imposing an appropriate sentence")

The plain language of the statute provides the quickest answer to the question posed here because it is clear from the face of the statute that the District Judge has the option to impose an appropriate sentence in the form of restitution on **DEFENDANTS** convicted of a crime. The Petitioner was not a defendant, therefore the District judge lacked the statuary authorization to order her to pay restitution.

3. **The Fourth Circuit erred by affirming Court orders without review of the entire record.**

The Petitioner's husband appealed his Final Restitution Order, *US v. Joseph Ziadeh*, 03-4520, CR-02-273, that was affirmed on July 19, 2004. Because there was no pending case against the Petitioner, she did not participate in the appeal process. However, the Court affirmed the order against her without review of the record.

The Court decision is inconsistent with the Courts decision in *Anders v. California* (1967) 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 and *People v. Wende* (1979) 25 Cal.3d 436, 158 Cal.Rptr. 839, a Court of Appeal must "independently review the entire record on appeal for any arguable issues"

4. **The Court erred affirming the Consent Order that was based on void judgment.**

Not only the Court had the judicial responsibility to review the entire record, but the Petitioner consistently argued the fact that she was not a defendant in the criminal case 3:02:CR-273 on June 10, 2003, and there was no pending case against her, as stated in the March 31, 2006 District Court order denying the petitioner's motion for summary judgment. Pursuant to the court ruling in *Long v. Shorebank Development Corp* stated in part;

> A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or subject matter, or lacks the inherent power to enter the particular judgment, or an order procured by fraud, can be attached at any time, in any court, either directly or collaterally, provided that the party is properly before the court.
>
> Long v. Shorebank Development Corp., 182 F 3d 548 (C.A. 7 III. 1999)

The Petitioner also brought the fact of the void judgment in front of the District Court in her complaint against the United States, seeking to quiet claim in the Civil Action No. 3:06cv386. As well as in various motions, counterclaim and rebuttals. In all her motions and appeals she provided evidence of Court's February 10, 2003 Order dismissing the entire indictment against her, rendering the Final Restitution Order without jurisdiction and thus Void.

In it's March 31, 2006 order the court recognized that there was no pending case against the petitioner, but did nothing to void the judgment; Likewise the Court

of Appeals acknowledged the restitution was the Petitioner's husband, and stated in part;

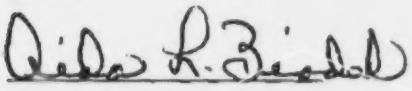
> In essence, the Consent order acknowledged that the Plaintiff, Aida L. Ziadeh, was indebted to the United States in the amount of $894,161.48 plus interest as reflected in the final Restitution entered in her husband's criminal case.
>
> Appendix H(pg.A-16)

However, neither the District Judge nor the Circuit judge did exercised their judicial authority to void the restitution. The decision of the judges is in conflict with decisions of this Honorable Court. This Honorable Court Should address these issues to promote equity in judicial decisions.

CONCLUSION

For these reasons, the Petitioner, Aida L. Ziadeh, PRO SE, respectfully ask that this petition for Writ of Certiorari be granted. The Court may also wish to void the Final Restitution Order and the Consent Order.

Respectfully Submitted on this 10th day of February, 2009.



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Respondent.

PROOF OF SERVICE

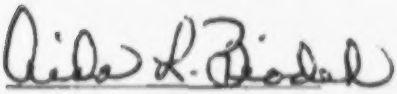
I, Aida L. Ziadeh, do swear or declare that on this date, February 10, 2009, as required by the Supreme Court Rule 29, I have served the enclosed Motion for a Writ of Certiorari on each party to the above proceeding or that party's counsel, and every other person require to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid.
The names and addresses of those served are as follows:

United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

Solicitor General of the U.S.
950 Pennsylvania Ave., N.W.,
Washington, D.C. 20530-0001

In compliance with 28 U.S.C § 1746, I declare under penalty of perjury that the forgoing is true and correct.

Executed this 10th day of February, 2009



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Respondent.

CERTIFICATE OF COMPLIANCE

As required by the Supreme Court Rule 33.1(h). I certify that the Petition for writ of certiorari contains 3,522 words, excluding the parts of the petition that are exempt by supreme Court Rule 33.1(d).

In compliance with 28 U.S.C § 1746, I declare under penalty of perjury that the forgoing is true and correct.

Executed this 10th day of February, 2009

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